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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,447	12/30/2003	Raymond Liberatore	12,799	4968
61650	7590	12/08/2006	EXAMINER	
MYERS WOLIN, LLC 100 HEADQUARTERS PLAZA MORRISTOWN, NJ 07960			WALCZAK, DAVID J	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/750,447	LIBERATORE, RAYMOND
	Examiner	Art Unit
	David J. Walczak	3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 October 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 75-94 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 91,92 and 94 is/are allowed.
- 6) Claim(s) 75-90 and 93 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 October 2006 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/30/06.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because in Figure 4, it appears that reference character 17 should be 22 (see Figures 2 and 3). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

of the following is required: The structure defined in claim 77 does not have antecedent basis in the specification.

***Claim Rejections - 35 USC § 112***

Claim 77 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The recitation of the opening having a height dimension that varies throughout the lateral width extent of the opening is considered to be new matter, i.e., the specification fails to disclose this feature and the drawings seem to show an opening wherein the height substantially constant (as defined claim 76). It is noted that Figure 4A shows a wavy opening, but the height of the opening still appears to remain constant.

Claims 80, 84 and 93 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In regard to claim 80, the specification has not enabled a nozzle wherein both the opening has widthwise ends that "remain of fixed dimension" and wherein the nozzle is flexible, i.e., if the ends of the opening "remain of fixed dimension", the nozzle must be stiff (as disclosed on page 11, line 16) and it is unclear as to how a "stiff" nozzle

can also be defined as "flexible". In regard to claims 84 and 93, the specification has not enabled a plug on the cap that extends around the opening (currently, the specification only discloses a plug that is inserted into the opening, as shown in Figure 6). It appears that the term "plug" in claims 84 and 93 should be --cap-- and the claim will be examined as such.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 75-76, 78-82 and 86-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al (hereinafter Anderson). In regard to claims 75 and 81, Anderson discloses a nozzle 14 for attachment to a dispenser comprised of a fitting 16 at a first end to facilitate attachment to the dispenser, an opening 20 at a second end opposite the first end through which material is dispensed wherein the opening defines a periphery having a lateral width dimension and a height dimension wherein the width dimension substantially exceeds twice the height dimension and wherein the opening "remains of fixed dimension" (as the nozzle is disclosed as being made from a rigid material, the opening will "remain of fixed dimension") and a forwardly projecting side wall tapering from the first end to the opening wherein the sidewall has a peripheral outer surface defined by a curved surface that transitions to a convex surface that

terminates at the opening (viewing Figure 3, the left hand side surface defines a sidewall having a curved surface that transitions to a convex surface as claimed) wherein a substantially constant layer of material is disposed through the opening and has a width of the opening. Although the ends of the opening are not shown to be formed from arcuate and concave surfaces and thus form an oval periphery, it is the Examiner's position that the ends of the opening can be shaped to have any suitable shape, including a straight edge or an arcuate edge without effecting the overall operation thereof. Such a modification would be a mere matter of design choice, especially since the Applicant has not placed any criticality on the shape of the ends of the opening. In regard to claim 76, the height dimension remains substantially constant throughout the width. In regard to claim 78, the side wall includes an "upper wall" and "lower wall" such that when viewed in profile, the upper wall extends further from the first end than the lower wall (viewing Figure 3, the right hand wall defines an "upper wall" that extends further from the first end than the opposite "lower wall"). In regard to claim 79, the upper wall extends beyond the opening to form a "spreader blade" (see Figure 3). In regard to claim 80, the nozzle is "flexible" (at least to some degree). . In regard to claim 82, a cap is employed for covering the opening (see column 2, lines 28-29). In regard to claim 86, the fitting 16 is threaded. In regard to claim 87, the device includes a compressible dispenser 17 attached to the nozzle (see column 2, line 30). In regard to claims 88-90, as discussed above, the Anderson device includes the claimed structure wherein (viewing Figure 3), the entire exposed portion of the wall shown on

the left hand side is defined by concave surface positioned between two convex surfaces.

***Claim Rejections - 35 USC § 103***

Claims 83-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Holoubek et al. (hereinafter Holoubek). Although the Anderson reference does not disclose the details of the cap, attention is directed to the holoubek reference, which discloses another spreader device wherein a cap having a plug 47 thereon is employed to cover the spreader wherein the plug is inserted into an opening in the spreader in order to effectively seal the device. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a plug onto the cap in the Anderson device in order to enable the cap to effectively seal the device.

***Allowable Subject Matter***

Claims 91, 92 and 94 are allowed.

Claim 93 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
12/4/06